IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4574 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VRUJKUNVERBEN KANJIBHAI GAJERAW/O DECD. KANJIBHAI NARANBHAI
Versus
BARHAMAN TRIKAMJI NARANJI

Appearance:
1. First Appeal No. 4574 of 1999
MR VIMAL M PATEL for Petitioner No. 1-3
NOTICE SERVED for Respondent No. 1-2
MS SONAL D VYAS for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 06/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard. On the request by learned advocate for the appellant and respondent No.3 this appeal is decided today at the stage of admission, by this order.

2. This appeal under section 173 of the M.V. Act is directed against the judgment & award dated 7-4-1999 passed in MAC Petition No. 414 of 1993 by MAC Tribunal (Auxi) Rajkot district, at Gondal. Vide order dated 15-3-2002 notice was issued to the respondents as regards computation of loss of dependency benefit. Ms. Sonal D. Vyas, learned advocate has appeared on behalf of respondent No.3 United India Insurance Company Limited. Mr. Vimal M. Patel, learned advocate at the out set states that, this appeal is confined only to the computation of dependency benefit. Since the question involved in the appeal is with regard to computation of dependency benefit the R & P being not required have not been requisitioned from the trial Court.

3. In para-12 of the impugned judgment & award the Claims tribunal has observed that, pay of the deceased is shown as Rs.3575/- in exdhibit-35 which is the pay slip issued by the school, wherein deceased was serving at the time of accident. Statement exhibit-30 suggest the calculation showing the amount of salary which the deceased would have got at the time of his superannuation in the year 2003, had he not died earlier, and that the deceased would have drawn Rs.7,425/- per month by way of salary had he continued to serve till his superannuation. It need hardly be said that the salary of Rs.7,425/- at the time of his superannuation would be subject to all uncertainties of life and the service. Under the circumstances the mean has to be arrived at so as to calculate the loss of dependency benefit. The Tribunal at page-11 fixed monthly salary of the deceased at Rs.4,300/- per month, and after deducting 1/3 rd. share being personal expenses which would have been incurred by the deceased, 2/3 rd. amount is taken into consideration for the purpose of computing dependency benefit, and thereby observed that the loss of dependency benefit would come to Rs.2,868/- and rounded it off at Rs.2,900/-.

4. As observed above, with all uncertainties of life and service the deceased would have got the salary of Rs.7,425/- at the time of superannuation and considering the mean it would be reasonable to estimate future income of the deceased at Rs.6,000/- per month. After deducting 1/3 rd. amount being expenses which the deceased would

have ordinarily spent for himself, the amount that would have been available to the dependents would be Rs.4,000/per month. Now, considering the age of the deceased to be 48 years the Tribunal applied multiplier of 11 years. We do not think it proper to interfere with the multiplier adopted by the Tribunal. The loss of dependency benefit of Rs.4,000/- per month X 12 months comes to Rs.48,000/- per year and applying the multiplier of 11, the amount come to Rs.5,28,000/-; out of which the Tribunal has awarded Rs.3,82,000/-. Thus the additional amount by way of loss of dependency benefit which the appellants would be entitled to comes to Rs.1,46,000/- with 9 % interest from the date of application till realisation of the additional amount, in view of the judgment in the case of Kaushnuma Begam & ors. Vs. New India Assurance Company Limited & Ors, reported in 2001 ACJ, 428.

5. In the result the appeal is partly allowed to the extent that the appellants-claimants are entitled to additional amount of Rs.1,46,000/- with 9 % interest from the date of the application till realisation of the additional amount. No order as to costs.

6. The respondent No.3 Insurance Company will deposit the additional amount with interest as above within four months from today.

Dt: 6-5-2002 (N.G. Nandi, J)

(J.R. Vora, J)

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